

II. DIVERSITY JURISDICTION

3. This Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendants.

4. Plaintiff, Environmental Processing Systems, L.C., is a company with its principal place of business in Texas.

5. Defendant, Scottsdale Insurance Company ("Scottsdale") is an Ohio corporation with its principal place of business in Arizona.

a. Amount in Controversy

6. The “matter in controversy” under 28 U.S.C. § 1332(a) is determined by reference to the plaintiff’s pleadings. The damages the plaintiff claims in its petition, if apparently claimed in good faith, are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). “Where ... the petition does not include a specific monetary demand, [the defendant] must establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000.” See *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). Only “expenses and costs” are excluded from the calculation of the matter in controversy. 28 U.S.C. § 1332(a). Attorney’s fees are an element of the amount in controversy where their recovery is authorized by a statute under which the plaintiff sues. *H&D Tire & Auto. Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 330 (5th Cir. 2000), cert. denied, 534 U.S. 894 (2001).

7. Here, the amount in controversy exceeds the jurisdictional limit of \$75,000.00, exclusive of interest and costs, in this lawsuit. Since Plaintiff did not plead the amount in controversy in its Original Petition, it is determined by reference to Plaintiff’s demand letter dated September 10, 2016, attached as Exhibit “F.” Plaintiff sought a total of \$213,210.92 for economic damages, attorneys’ fees, and consequential damages. *Id.* Plaintiff has also alleged violations of the Texas Insurance Code which allows for recovery of statutory penalties and

attorneys' fees. *Id.* Thus, the amount in controversy definitely exceeds the jurisdiction minimum limit of \$75,000.00.

III. INFORMATION FOR THE CLERK

8. Plaintiff: Environmental Processing Systems, L.C.

9. Defendant: Scottsdale Insurance Company

10. The case is pending in the state court of Liberty County:

75th Judicial District Court
Honorable Mark Morefield
1923 Sam Houston, Room 303
Liberty, Texas 77575
Phone: (936) 336-4678

11. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, Defendant has attached copies of all processes and pleadings served upon it in the state court action. No further proceedings have been had therein. Pursuant to Local Rule 81, a copy of the trial court's docket sheet is attached as Exhibit "G" and an Index of Matters Being Filed is attached.

12. There are no other filings in state court at this time.

13. Counsel for Plaintiff:

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14. Counsel for Defendant, Scottsdale Insurance Company:

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IV. JURY DEMAND

15. Both Plaintiff and Defendant made a demand for a jury in the State Court Action. Defendant hereby requests a trial by jury in federal court as well.

V. MISCELLANEOUS

16. On the same day that this Notice of Removal was filed, Defendant filed notice of this removal in the State Court Action. A copy of this Notice of Removal filed in the State Court Action is attached as Exhibit "H."

17. Because Plaintiff is a business formed under the laws of Texas with its principal place of business in Texas, Defendants are all businesses incorporated in other states with their principal place of business in other states, and the amount in controversy exceeds \$75,000, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

PRAYER

WHEREFORE, Defendant, Scottsdale, respectfully requests that the above entitled action be removed from the 75th Judicial District Court of Liberty County, Texas, to the United States District Court for the Eastern District of Texas, Beaumont Division.

Respectfully submitted,

BY: /s/ Peri H. Alkas

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**ATTORNEY-IN-CHARGE
FOR DEFENDANT**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel as listed below by placing a copy of same in the United States mail, certified, return receipt requested, facsimile, electronically, and/or hand delivery on January 13, 2017.

Jason M. Byrd
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COUNSEL FOR PLAINTIFF

VIA CM/RRR: 7014 3490 0000 3310 7426
& VIA E-MAIL: jason@txbyrd.com

/s/ Peri H. Alkas

Peri H. Alkas